

## **Statement of**

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### **Introduction**

My name is Mike Orbach, and I appreciate the opportunity to testify regarding S. 637, the IFQ Act of 2001, and the general topic of access limitation in marine fisheries management. My formal training is in economics and cultural anthropology, and I have worked since the 1970's on the applications of social science to marine fisheries management at the local, regional, national and international levels, including on the design of several limited access systems. I have worked with NOAA and all eight of the Regional Fishery Management Councils, all three Interstate Marine Fisheries Commissions, and several individual states including having served for a decade as a member of the North Carolina Marine Fisheries Commission. I also served as a member of the Committee to Review Individual Fishing Quotas of the National Research Council, which produced the 1999 report, "Sharing the Fish: Toward a National Policy on Individual Fishing Quotas". I am testifying today as an individual, not representing any organization or interest group. I will confine my remarks to general aspects of access limitation and IFQs, but would be happy to provide further detailed remarks on specific aspects of these topics.

## **The Enclosure of the Ocean Commons**

The most general point I would like to make is that the development of limited access provisions in fisheries management is part of the more general movement towards “enclosure” of the ocean commons. The ocean and its resources have been viewed a ‘the last frontier’ on our planet, and as such have been subject to free and open access to those who wish to extract its resources and otherwise use or benefit from those resources. However, as human effects on ocean resources increase, through extraction, pollution and other alterations of the ocean environment, the need arises for the development of governance systems that preserve the public trust in these resources and environments while allowing for reasonable use and impact. Questions of limitations on access to these environments and resources naturally arise as part of these potential governance systems. IFQs, or any other access system, must be viewed as only part of the means to achieve legitimate objectives of policy and management, and where they are judged appropriate should be applied consistent with public trust principles, including those of equity as well as conservation.

Given the general history of human interactions with public trust resources, however, it is difficult to image that some form of access limitation will not eventually be legitimately considered in many if not all situations of ocean resource use, including fisheries. Although limited access systems place different constraints on traditional fishing communities, they have also been shown to provide significant benefits (NRC, 1999).

## **The Role of Social and Economic Factors in Marine Resource Conservation**

It is important to recognize that any form of conservation policy has both social and economic objectives and social and economic

impacts. No resource conservation measure has ‘solely biological or ecological’ objectives or impacts. This is recognized in the formulation of the concept of “Optimum Yield” in the Magnuson-Stevens Act. No quota; no season; no gear regulation is devoid of social and economic aspects in decision-making, nor of social and economic impact. Thus, the standards of holistic application of social and economic considerations to IFQs are equally applicable to virtually all fisheries management policy and management decisions, and should be consistently applied throughout the decision-making process. The need for better social and economic data to make these judgements was clearly noted in the Sustainable Fisheries Act amendments of 1996. In this area IFQs and other access limitation systems are different in degree, but not in kind; they all require much better social and economic data and assessment. The data we have show that IFQ systems have, by and large, met their design criteria.

### **Caution in the Upward Aggregation of Responsibility and Authority in Fishery Management Decisions**

The 1999 NRC report (NRC, 1999) notes the desirability of management decisions being made at the lowest possible level subject to appropriate public trust oversight. S. 637 generally follows this principle, recognizing both the focal role of the Regional Councils and the desirability of broad participation of constituents in the policy development and implementation process, including the potential for constituent referenda in those processes. However, caution should be exercised in restrictions placed on these processes, including specific provisions such as ‘sunset’ requirements (s.303(e)(2)(E) and (F)) or restrictions on transferability (s.303(e)(6)(A)) for IFQs, which may have the unintended effect of prohibiting the design of limited access systems with the potential to achieve their legitimate objectives. These decisions would be better left to the constituents, the

Councils, and NOAA. Many models exist for “comanagement” between constituents and governments entities.

### **Involvement of Constituencies in the Development and Implementation of Limited Access Systems**

Substantial, and increased involvement of fishery constituencies in the policy development and implementation process is a critically important objective. However, care should be taken that such involvement preserves important public trust principles. One such principle is reflected in s.303(e)(1)(E), which prohibits any person or entity from acquiring an “excessive share” of any individual quotas, a goal that is clearly possible to achieve as demonstrated in several existing limited access systems. The decision framework should also not unreasonably hinder the broad consideration of potential alternatives. As presently written, s.303(8)(B)(b)(i)(1) and (2) may present such a hindrance, in prescribing that both the “submission” and the “preparation” of plans be subject to referendum procedures. The problem with requiring that “preparation” of such plans be subject to referendum is that until issues are identified, objectives set, and alternatives analyzed it is not clear that appropriate information will be available to constituencies in order to make informed judgments.

“Submission”, on the other hand, clearly could be subject to an informed referendum, assuming constituents have been fully involved in the process. There are many examples of where this has occurred in a manner satisfactory to the constituents.

### **The Appropriate Scope of Application for Limited Access Provisions**

Regarding the potential for application of limited access provisions beyond the harvesting sector, it is important to review the principles and circumstances which lead to the consideration of access limitation to marine resources. The primary principle is that

of protection of public trust resources and the circumstances are those that arise from open access in the harvest sector. The Magnuson-Stevens Act is clear in requiring that any restricted access provisions be tied to legitimate conservation purposes. I believe that many applications of access limitation to the harvesting sector can assist in protecting the public trust. However, applications (or extensions) of access limitation to the processing sector become one step farther removed from the basic needs of resource conservation. If some provision should be made to ameliorate the social and economic effects of the transition to a harvest sector limited access system on the processing sector, consideration should be given to addressing those provisions in a way that does not unnecessarily extend access limitations beyond their appropriate scope. Nor should any measure unnecessarily or inappropriately complicate the system design in a way that may violate the objectives or authorities of the Magnuson-Stevens Act. There are many possible alternatives for addressing such transition effects.

## **Summary**

In general, I believe that S. 637 is well crafted, subject to the above remarks, and reflects many of the recommendations of the 1999 NRC report. Quoting from that report, “The individual fishing quota is one of many legitimate tools that fishery managers should be allowed to consider and use” (NRC, 1999, p-194). I would be pleased to answer any questions regarding this testimony, or to supply additional testimony or information.

## **Reference**

National Research Council, 1999. Sharing the Fish: Toward a National Policy on Individual Fishing Quotas. Washington, D.C.: National Academy Press, 422pp.